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RESOURCE MANAGEMENT AGENCY

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Community & Economic Development Department

Engineering & Survey Services Department

Environmental Health Services Department

Planning Department

Roads Department

DOCKET

06-0II-1

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Submitted by email

California Energy Commission

Dockets Office, MS -4

Re: Docket No. 06-0II-1

1516 Ninth Street

Sacramento, CA 95814-5512

RE: Docket No. 06-0II-1 - Draft Statewide Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development [Publication No. CEC-700-2006-013-SD]

Dear Commissioners:

The Kern County Planning Department appreciates the opportunity to provide comments on the proposed Draft Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development. Your leadership in assisting local government in implementing methods of mitigating the avian impacts of wind energy generation is appreciated.

Kern County contains an extensive wind resource area, including the Tehachapi-Mojave Wind Resource Area containing over 3,500 installed wind turbines. This wind resource area consists two very distinct settings: a portion of the Tehachapi Mountains/ southern Sierra Nevada and the Mojave Desert, east of Tehachapi Pass. Elevation ranges from 6,000 feet to 2,600 feet near Mojave. This area has been identified by your agency as being the plausible source for at least 42% of the renewable energy generation needed to meet the goals of the state Renewable Portfolio Standard program. In Kern County all commercial wind farms are required to utilize the Wind Energy (WE) Combing District (Chapter 19.64) which is an overlay district that is combined with Agricultural (A) zoning. This overlay district provides detailed siting criteria and setbacks to mitigate for environmental impacts. As the existing areas of A/WE is now sited with turbines or are primarily repowering projects, new commercial wind projects require a zone change with a full Environmental Impact Report for approval before construction.

This is a discretionary process that may or may not result in the permitting of a new commercial wind energy project. As a general comment the guidelines appear to not be written for the local government process. The use of the word "pre-permitting" implies a ministerial process, when the impacts are really being considered through the CEQA process which is discretionary. It is with this background that we provide the following comments.

Chapter 1: Preliminary Site Screening

This provides excellent guidance for any biologist hired to evaluate the sensitivity of a proposed wind resource area. Table 1 is a particularly useful checklist that we will consider incorporating into our handouts for applicants seeking information on appropriate places for commercial wind projects.

Chapter 2: Science Advisory Committee

Kern County Planning has experience with the use of science advisory committees on Habitat Conservation Plans, recovery plans under the Endangered Species Act and federal land planning with the Bureau of Land Management and National Park Service. In our view, the proposed establishment of project specific or regional science advisory committees is impractical and we do not support this portion of the guidelines.

Current staffing levels of wildlife agencies, as well as the Planning Department, are not sufficient to provide the agency representation that would be needed to staff the number of committees for Kern County alone. Further, as all our discretionary actions are subject to CEQA, it appears to afford specific interest groups a level of participation not provided to other members of the public. While we respect the special interest that conservation organizations have in the matter of impacts to birds and bats, the credentials of representatives vary in local chapters. Establishment and coordination of a project level committee will consume resources and could generate controversy at the preliminary stages of a project when the Planning Department actually knows very little about the project to communicate to the public. The conservation organizations are fully included in the public comment process and project proponents are encouraged to consult with them well before surveys are conducted. If a requirement for a science advisory committee were made mandatory or incorporated into the guidelines(which then will be used as a basis for litigation by interest groups), it is clear that there will be a significant delay in processing and consideration of commercial wind projects in Kern County. Such delays are contrary to the intention of the CEC to meet the state goals for renewable energy and assist local government in implementing methods of mitigating the bird and bat impacts of wind energy generation.

While Kern County will consider the establishment of a regional committee for any large programmatic EIR done for a new wind resource area, the need is not fully clear to us. The appropriate entities for consultation are the permitting agencies; US Fish and Wildlife Service and California Department of Fish and Game. We have found them responsive and knowledgeable on all our projects. We certainly will seek guidance from them on any peer review that should be conducted on any regional studies or other specialized consultants that should be retained.

As for issues raised in comment letters regarding the ethics of biologists hired by the developers which therefore increases the need for a science advisory committee, Kern County requires that all project proponents sign an agreement that prohibits any confidentiality agreements for any consultants that provide studies for use in the EIR. If the ethics of consultants hired by the developers to conduct studies is an issue, it is outside the scope of the CEC to address the issue, even with a science advisory committee.

We recommend the following changes to the concept of the science advisory committee:

1. The State should establish and fund a standing statewide science advisory committee that local government and project proponents could use to receive guidance on wind energy projects.
2. Project- specific and regional science advisory committees should be deleted from the guidelines.

Chapter 5: Impact Avoidance, Minimization and Mitigation Measures

Overall this is a useful guide for the variety of potential mitigation for bird and bat impacts. The document appropriately notes on page 35, that “a nexus between the level of impact and the amount of mitigation should be established by the permitting agency.”

For consistency the section on compensation (page 34) should be amended for the following language:

Compensation amounts and metrics are site-and species-specific and need to be formulated for each project with input from the lead agency, CDFG, and USFWS. The proposed mitigation can then be provided for review and comment to the stakeholders and, if applicable, any the science advisory committee.

The document fails to provide any guidance on streamlining the process for wind permitting in relation to the issue of impacts on birds and bats. The guidelines should include a recommendation for a process to establish a CEQA exemption, perhaps based on size of turbines and total MGW with standard protocols. This seems an excellent task for a statewide science advisory committee.

Conclusion:

Kern County is committed to wind energy that is sited and operated in a manner that reduces mortality and minimizes impacts to birds and bats. The draft guidelines, as a science-based reference, will provide a needed resource to us as we continue to review and consider projects to meet the state goals for renewable energy. With the changes we have requested, we see the guidelines as useful and responsive to the needs of local government. Thank you for the opportunity to comment.

Sincerely,

Lorelei H. Oviatt, AICP
Special Projects, Division Chief

cc: Supervisor Maben
Supervisor McQuiston